



LEGISLATION, REGULATIONS & STANDARDS

Illinois Lawmaker Proposes Food Additive Ban

An Illinois State Senator has proposed a law that would ban four food additives. State Sen. Willie Preston (D-Chicago) introduced [Senate Bill 2637](#), which seeks to ban brominated vegetable oil, potassium bromate, propylparaben and Red Dye No. 3. If passed, Illinois would become the second state to ban such ingredients; California passed a first-in-the-nation bill in 2023 banning the same additives. Preston indicated that he intends to work with his colleagues during the legislative session to include additional additives such as titanium dioxide. The proposed legislation also calls for studies on the health risks associated with butylated hydroxyanisole (BHA) and butylated hydroxytoluene (BHT).

“Illinois families deserve to have access to the healthiest food options,” Preston said in a [statement](#). “This legislation does not seek to ban any products or take away any of our favorite foods. This measure sets a precedent for consumer health and safety to encourage food manufacturers to update their recipes to use safer alternative ingredients.”

U.S. Senators Propose Banning Cultured Meat in School Lunches

U.S. Sens. Mike Rounds (R-S.D.) and Jon Tester (D-Mont.) have introduced legislation that would ban cell-cultivated meat products from being served in school lunches. The [School Lunch Integrity Act of 2024](#) would prohibit such products under the

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National School Lunch Program and the School Breakfast Program.

In a [press release](#), Rounds and Tester were critical of the U.S. Department of Agriculture (USDA) decision to issue grants of inspection for cell-cultured meat production, allowing two companies to produce cell-cultivated chicken products. They said the moves “undermine the important work of American livestock producers.” The senators also note that USDA has not issued guidance on cell-cultivated protein in the two school meal programs, and said a lack of research raises questions about the products’ safety.

“Our students should not be test subjects for cell-cultivated ‘meat’ experiments,” Rounds said. “South Dakota farmers and ranchers work hard to produce high quality beef products. These products are often sold to South Dakota schools, where they provide necessary nutrition to our students. With high quality, local beef readily available for our students, there’s no reason to be serving fake, lab-grown meat products in the cafeteria.”

TTB To Hold Listening Sessions on Alcohol Labeling

The Alcohol and Tobacco Tax and Trade Bureau (TTB) has [announced](#) dates for virtual public listening sessions to receive input on the labeling of alcohol products. The agency’s questions include discussions on whether consumers find current labeling standards sufficient or whether they would prefer additional information on nutritional content, ingredients or allergens. TTB also requests information from industry on whether and by how much changes to alcohol labeling requirements would cause the cost of products to increase. The listening sessions will be held February 28 and 29, 2024.

Public Health Leaders Call on UK Government to Restrict Energy Drink Sales to Minors

More than 40 U.K. health organizations, researchers and public health leaders have called on the government to restrict the sale of energy drinks to those under the age of 16. According to a [report](#) in *Beverage Daily*, groups such as the Children's Food Campaign and Food Active, along with researchers and public health leaders, have written to Victoria Atkins, Secretary of State for Health and Social Care, following the publication of a [study](#) in



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ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.



January in the *Public Health* journal on the effects of energy drink consumption in minors.

The study sought to update an earlier review published in 2016 focused on the health and other outcomes associated with children and young people’s consumption of energy drinks. After reviewing 57 studies, researchers noted that many of the studies reported a strong association between consumption of energy drinks and smoking, alcohol use, binge drinking and other substance use. Researchers also purportedly found links between energy drinks and sensation-seeking, delinquent behaviors, short sleep duration, poor sleep quality and low academic performance, as well as an increased risk of suicide, psychological distress, attention-deficit hyperactivity disorder symptoms, depressive and panic behaviors, allergic diseases, insulin resistance and dental side effects.

“This review adds to the growing evidence that [energy drink] consumption by children and young people is associated with numerous adverse physical and mental health outcomes,” they concluded. “Where feasible and ethical, additional longitudinal studies are required to ascertain causality. The precautionary principle should be considered in regulatory policy and restriction of [energy drink] sales to this population.”



LITIGATION

Court Dismisses “Tree Nut Free” Labeling Claims Against Candy Maker

A federal court in Kentucky has dismissed a proposed class action against the maker of Airheads Gummies that alleged the company misled consumers by labeling its products as “tree nut free” when they contain coconut oil. *Ruff v. Perfetti Van Melle USA Inc.*, No. 23-0070 (E.D. Ky., entered January 27, 2024). The plaintiff alleged that her son, who has a tree nut allergy, became sick after eating the candy. Perfetti Van Melle USA Inc. filed a motion to dismiss, arguing that the complaint failed to state a plausible claim for relief. The court found that the plaintiffs pleaded sufficient facts that the “tree nut free” label was an affirmative misleading statement because the product contained coconut oil and coconuts are considered a tree nut by the U.S. Food and Drug Administration.

However, the court questioned whether the plaintiffs acted reasonably when relying on the label in these circumstances, calling it “an unwarranted factual inference” to accept that the plaintiffs relied on the “tree nut free” label to determine the candy

did not contain coconut oil when it was listed as an ingredient above the label. “By Plaintiffs’ own admission, they carefully review ingredients lists for potential allergens,” the court said. “Further demonstrating the unreasonableness of Plaintiffs’ reliance on the label, Plaintiffs state in the Amended Complaint that they ‘relied in substantial part’ on the ‘tree nut free’ label, meaning that in plain language that they considered additional information on the packaging besides the ‘tree nut free’ label.”

The court held that because reliance is a requirement of a claim for negligent misrepresentation in Kentucky, the plaintiffs failed to state a claim for which relief can be granted. The court also denied a bid by the plaintiff to amend the complaint.

British Tax Appeals Court Rules Walkers Poppadoms Same as Potato Crisps

A British tax appeals court has ruled that Walkers Sensations Poppadoms are the same as potato crisps, the *New York Times* [reported](#). As a result of the ruling, the company must pay the same value-added tax (VAT) on its poppadoms as it does on its other potato crisp products.

Walkers reportedly argued that their product is meant to be eaten with other items, such as chutney or dips, and, as such, should not be subject to the VAT. Additionally, the company argued that the type of potato starch and granules used to make them should not be classified as potatoes.

The court disagreed, finding the products “obviously contain potato,” the *Times* said. “The fact that a poppadom made to a traditional recipe from gram flour without potato is zero-rated for VAT purposes does not mean that a poppadom made to a traditional recipe which includes potato must also be zero-rated,” the court said. “The former is not excluded because it is a ‘poppadom’ but, instead, because it contains no potato.”

Consumer Sues Fiji Water Distributor for Alleged Microplastics

An Illinois man has filed a proposed class action against The Wonderful Co., claiming that Fiji bottles of water contain microplastics. *Daly v. The Wonderful Company LLC*, No. 2024CH00349 (Cook County, Illinois Cir. Ct., filed January 18, 2024). The plaintiff alleged that the company misleadingly labels its products as “natural,” arguing that when consumers drink the products, they are consuming synthetic plastic particles. “Plaintiff was unaware that the Products contained microplastics when he

purchased them,” he said in the complaint. “Worse than the money, Plaintiff, the Class, and Sub-Class were deprived of their protected interest to choose the type and quality of products they ingest.”

The plaintiff alleges that the defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act along with claims of common law fraud and unjust enrichment. He seeks class certification, declaratory judgment, injunctive relief, and attorney's fees, among other costs.

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